

REMARKS

1. In response to the Office Action mailed February 2, 2010, Applicant respectfully requests reconsideration. Claims 1-6, 8-10, 12, and 15-29 were last presented for examination. In the outstanding Office Action, claims 1-6, 8-10, 12, and 15-29 were rejected. By the foregoing Amendments, claims 1-6, 8-10, 12, 15-17, 19, 21, 22 and 24-28 have been amended, claims 18, 20, 23 and 29 have been cancelled, and claim 30 has been added. Upon entry of this paper, claims 1-6, 8-10, 12, 15-17, 19, 21, 22, 24-28 and 30 will be pending in this application. Of these twenty-two (22) claims, five (5) claims (claims 1, 19, 21, 22 and 24) are independent.

2. Based upon the above Amendments and following Remarks, Applicant respectfully requests that all outstanding objections and rejections be reconsidered and withdrawn.

Claim Rejections under §112

3. Claims 1-6, 8-10, 12, 15-18 and 21-29 were rejected under 35 U.S.C. 112, second paragraph, as allegedly indefinite.

4. In the Office Action, the Examiner noted that “[i]t appears that the word ‘receive’ was erroneously included” in line 6 of Applicant’s claim 1. (See, Office Action, pg. 3.) Applicants thank the Examiner for identifying this informality. Applicant has removed the word “receive” from claim 1.

5. With regard to Applicant’s claims 21, 22 and 24, the Examiner asserted that “[t]he scope of the limitation ‘partially implantable’ is unclear, especially since only the external components are being claimed.” (See, Office Action, pg. 3.) As amended above, Applicant’s claims 21, 22 and 24 no longer recite “a partially implantable medical device.” As amended, claims 21 and 24 recite “[a] cochlear implant comprising: an implantable component . . . and an external component,” and claim 22 recites “[a] medical device comprising: an implantable component . . . and an external component.” (See, Applicant’s claims 21, 22 and 24, above.)

6. For at least the reasons discussed above, Applicant respectfully requests that these rejections be reconsidered and withdrawn.

Claim Rejections under §103(a)

7. Claims 1-6, 8-10, 12 and 15-29 were rejected under 35 U.S.C. 103(a) as allegedly unpatentable over U.S. Patent No. 4,322,585 to Liautaud in view of U.S. Patent No. 4,280,256 to de Jong. Applicant respectfully requests that these rejections be reconsidered and withdrawn for at least the following reasons.

Claim 1

8. As amended, Applicant's claim 1 recites "[a] cochlear implant comprising: an implantable component including an implantable elongate electrode carrier; an external component; and a clothing attachment device for attaching the external component to an article of clothing, the clothing attachment device comprising: . . . a plurality of engagement members disposed in the engagement housing and collectively configured to releasably engage at least a portion of the elongate member and configured to release said elongate member from said engagement members in response to the application of a magnetic field to said engagement members." (*See*, Applicant's claim 1, above.)

9. As noted above, claim 1 was rejected as allegedly unpatentable over Liautaud in view of de Jong. Liautaud discloses "[a] personal electronic listening system" that includes "miniature transducer or speaker units 15 and 16 . . . positioned in the vicinity of the right and left ears . . . of the user." (*See*, Liautaud, Abstract, and col. 2, lns. 23-25.) Each transducer unit has an enclosure 8, and that pins 27, 28 extend out of the enclosure. (*See*, Liautaud, col. 2, lns. 29-33 and 39-43.) Additionally, Liautaud discloses pushing pins 27, 28 through clothing and sliding retaining clips 32, 33 over the ends of pins 27 and 28, respectively. (*See*, Liautaud, col. 2, lns. 46-48.) Liautaud also discloses that a retaining clip 32 includes "a central pin receiving aperture 36," as well as finger release tabs 38 and 39. (*See*, Liautaud, col. 2, lns. 59-62; and FIG. 5.)

10. The Examiner does not assert that Liautaud discloses "a plurality of engagement members . . . configured to release said elongate member from said engagement members in response to the application of a magnetic field to said engagement members," as recited in Applicant's claim 1, as amended. Rather, the Examiner relies secondarily upon de Jong, asserting that de Jong discloses "the engagement of the pin being releasable by a magnetic unlocking device acting on said plurality of magnetic members." (*See*, Office Action, pg. 4.)

11. De Jong discloses “[a] fastener which comprises a closed housing having an aperture therein . . . and a pin that can be inserted through said aperture into said housing.” (*See*, de Jong, col. 1, lns. 4-8.) More specifically, de Jong discloses that “[p]in 2 is inserted . . . into the central aperture of the lock. As the pin is inserted into the lock, balls 11, along with thrust member 12, are pushed back . . . against the pressure of spring 13 to such an extent that the pin can pass between the balls and be pushed home into the lock.” (*See*, de Jong, col. 2, lns. 45-53.) De Jong also discloses that “the balls will be jammed fast between the walls of cap 6 and the pin, and the resulting frictional force will prevent the pin from being removed.” (*See*, de Jong, col. 2, lns. 55-58.) De Jong further states that “[t]he pin can accordingly only be removed when the thrust member is retracted by magnetic means.” (*See*, de Jong, col. 2, lns. 66-68.)

12. The Examiner asserts that “[i]t would have been obvious to one having ordinary skill in the art at the time of the invention to use any known engagement means such as magnetic members to releasably engage the pin member as taught by de Jong, in the hearing device disclosed by Liautaud.” (*See*, Office Action, pg. 5.) However, regardless of whether Examiner’s proposed combination of Liautaud and de Jong is proper, Applicant respectfully submits that the proposed combination of Liautaud and de Jong fails to disclose or render obvious “[a] cochlear implant comprising: an implantable component including an implantable elongate electrode carrier; and an external component including a clothing attachment device for attaching the external component to an article of clothing, the clothing attachment device comprising: . . . a plurality of engagement members . . . configured to release said elongate member from said engagement members in response to the application of a magnetic field.” (*See*, Applicant’s claim 1, above.)

13. Moreover, the Examiner does not assert that the proposed combination of Liautaud and de Jong contains the recited cochlear implant. Instead, the Examiner proposes a further modification of the Liautaud and de Jong combination, stating that “it is well known in the art that the external parts of cochlear implants are commonly attached to the user’s clothing and even the Applicant’s Specification states, ‘the external speech processor unit is typically...removably clipped on the clothing’ (Paragraph 4, Fig. 1).” (*See*, Office Action, pg. 15.)

14. Applicant submits that this proposed combination of Liautaud, as modified by de Jong, and the cited portion of Applicant's Specification is improper because the Examiner has failed to provide an appropriate basis for combining Liautaud, as modified by de Jong, with the cited portion of Applicant's Specification. As stated by the Supreme Court in *KSR International Co. v. Teleflex Inc.*, "a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art." (127 S.Ct. 1727, 1741 (2007).) The Supreme Court recognized that "rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some *articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.*" (See *KSR*, 127 S.Ct. at 1741 (citing *In re Kahn*, 441 F.3d 977, 988 (C.A.Fed. 2006); emphasis added.) Applicant submits that the Examiner has failed to satisfy these legal obligations by failing to provide an adequate reason to justify combining Liautaud, as modified by de Jong, with the cited portion of Applicant's Specification.

15. As discussed above, the Examiner proposes incorporating the fastener of de Jong into the device of Liautaud. (See, Office Action, pg. 5.) However, Applicant submits that the Examiner has failed to provide an adequate reason to justify incorporating the fastener of de Jong into the "external part" of the cochlear implant recited in the Background section of Applicant's Specification. (See, Applicant's Specification, page 1, last paragraph.)

16. As noted above, de Jong discloses "a fastener [that] can be used, for example, for tagging clothing in a shop with a detection plate containing an electrical circuit adapted to be detected in a detection zone. Such detection plates will normally be removed by a shop assistant by means of a special apparatus if a piece of clothing has been paid for by the customer." (See, de Jong, col. 1, lns. 13-18; emphasis added.) Additionally, de Jong states that "[i]t is therefore of paramount importance that the pin can only be removed by means of the special apparatus, which comprises a strong magnet preferably an electromagnet for pulling the balls clear of the pin." (See, de Jong, col. 1, lns. 26-28; emphasis added.)

17. In the Office Action, the Examiner concludes that "[i]t would have been obvious to one having ordinary skill in the art at the time of the invention to use the fastening means as described by Liautaud or de Jong as a fastening means for a cochlear implant, because it would have been obvious to use any known removable fastening means to achieve the same function

as the clips for cochlear implants that are well-known in the art." (See, Office Action, pg. 15; emphasis added.) Applicant respectfully disagrees with these assertions.

18. Applicant submits that the disclosure of the clip described in the Background section of Applicant's Specification fails to provide an adequate reason for using the fastening means of de Jong in place of that clip. The Background section of Applicant's Specification states that "[t]he external speech processor unit is typically carried in a pouch or removably clipped on the clothing, such as a belt, worn by the user **using a clip.**" (See, Applicant's Specification, page 1, last paragraph; emphasis added.) In addition, the Background section discloses "**a removable fastener**, for example, a belt clip," and states that "such an attachment mechanism allows the device to be **easily removed when needed.**" (See, Applicant's Specification, page 3, first paragraph; emphasis added.)

19. Applicant submits that the Examiner has failed to provide an adequate reason why it would have been obvious to replace the **easily-removable** belt clip discussed in the Background section of Applicant's Specification with the fastener of de Jong, which requires a special apparatus for removal. (See, de Jong, col. 1, lns. 26-28, and col. 2, lns. 66-68.) As noted above, the Examiner states that "it would have been obvious to use any known removable fastening means **to achieve the same function** as the clips for cochlear implants that are well-known in the art." (See, Office Action, page 8; emphasis added.) However, Applicant submits that the belt clip of the Background section of Applicant's Specification is the only clip for a cochlear implant that the Examiner identifies, and submits that a belt clip performs a different function than the fastener of de Jong. (See, Office Action, pg. 15.) Specifically, the belt clip attaches the device such that it may be easily removed by hand, while the fastener of de Jong is difficult to remove by hand and instead requires a special apparatus for removal, as discussed above. Thus, Applicant submits that the belt clip and de Jong's fastener perform two different kinds of attachment and therefore perform two different functions. Accordingly, Applicant submits that the Examiner has failed to provide an adequate reason why it would have been obvious to replace the belt clip with de Jong's fastener.

20. The Examiner also states that "[t]he Applicant admitted that pins and fasteners to connect cochlear implants were well known in the art, and thus it would have been well-known to use any known type of fastener, such as ones disclosed by Liautaud or de Jong." (See, Office

Action, pg. 16.) Applicant disagrees and submits that neither the Background section nor FIG. 1 of Applicant's Specification discloses the use of a pin to connect a cochlear implant. Rather, as noted previously, the fastener disclosed in the Background section of Applicant's Specification is an easily-removable belt clip. (See, Applicant's Specification, page 3, first paragraph.) As such, Applicant submits that it would not have been obvious in light of Applicant's Background section to incorporate the fastener of de Jong, which is difficult to remove by hand, into a cochlear implant.

21. For at least the reasons discussed above, Applicant respectfully submits that claim 1 is allowable.

Claim 19

22. Applicant's claim 19 recites, in part, "[a] hearing prosthesis comprising: an implantable component; and an external component comprising: a casing; [and] at least one processor of said medical device disposed in the casing." (See, Applicant's claim 19, above.)

23. As noted above, Liautaud discloses "[a] personal electronic listening system" that includes "miniature transducer or speaker units 15 and 16 . . . positioned in the vicinity of the right and left ears . . . of the user," and are mounted to an article of clothing. (See, Liautaud, Abstract, and col. 2, lns. 23-25 and 37-43.) Liautaud discloses that each transducer unit includes a miniature speaker disposed inside of an enclosure. (See, Liautaud, col. 2, lns. 29-35.)

24. Applicant submits that Liautaud discloses an external electronic listening system, and not "[a] hearing prosthesis comprising: an implantable component; and an external component." (See, Applicant's claim 19, above.) Specifically, Applicant submits that Liautaud fails to disclose "an implantable component," as recited in Applicant's claim 19. Additionally, Applicant submits that de Jong fails to cure this deficiency of Liautaud. De Jong discloses "a fastener [that] can be used, for example, for tagging clothing in a shop with a detection plate," and not "[a] hearing prosthesis comprising: an implantable component," as recited in Applicant's claim 19. Because neither Liautaud nor de Jong discloses an implantable component, Applicant submits that the combination of Liautaud and de Jong proposed by the Examiner does not contain "an implantable component," as recited in Applicant's claim 19. As such, Applicant submits that the proposed combination of Liautaud and de Jong does not render

obvious “[a] hearing prosthesis comprising: an implantable component,” as recited in Applicant’s claim 19.

25. As such, Applicant respectfully requests that this rejection be reconsidered and withdrawn.

26. Additionally, in the Office Action, the Examiner equates Liautaud’s transducer unit with the “at least one processor of said hearing prosthesis” recited in Applicant’s claim 19. However, for at least the reasons discussed below, Applicant submits that Liautaud’s transducer unit is not equivalent to the “at least one processor” recited in Applicant’s claim 19. Section 2111 of the Manual of Patent Examining Procedure (MPEP) explains that “[t]he Patent and Trademark Office (‘PTO’) determines the scope of claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction ‘in light of the specification as it would be interpreted by one of ordinary skill in the art.’” *Phillips v. AWH Corp.*, 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005) (quoting *In re Am. Acad. Of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364, 70 USPQ2d 1827 (Fed. Cir. 2004)) (emphasis added). Moreover, “[c]laims are not to be read in a vacuum, and limitations therein are to be interpreted in light of the specification in giving them their ‘broadest reasonable interpretation’.” *In re Marosi*, 710 F.2d 799, 218 USPQ 289, 292 (Fed. Cir. 1983) (quoting *In re Okuzawa*, 537 F.2d 545, 548, 190 USPQ 464, 466 (CCPA 1976)) (emphasis in original).

27. Similarly, “[i]n the absence of an express intent to impart a novel meaning to the claim terms, the words are presumed to take on the ordinary and customary meanings attributed to them by those of ordinary skill in the art.” (See, MPEP § 2111.01 (III), quoting *Brookhill-Wilk 1, LLC v. Intuitive Surgical, Inc.*, 334 F.3d 1294, 1298, 67 USPQ2d 1132, 1136 (Fed. Cir. 2003) (emphasis added). “[T]he ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention.” (See, MPEP § 2111.01(III), quoting *Phillips*, 415 F.3d 1303, 1313.)

28. Applicant respectfully asserts that Liautaud’s transducer units containing miniature speakers cannot be considered equivalent to a “processor” according to the ordinary and customary meaning of that term, and as that term would be understood by one of ordinary skill in the art in light of Applicant’s specification. A “processor” is defined as a component “that

performs calculations or other **manipulations of data.**” (See, “processor”, The American Heritage® Science Dictionary, Houghton Mifflin Company, <http://www.dictionary.reference.com/browse/processor>; emphasis added.) Applicants’ use of the term “processor” in the specification of the present application is consistent with this ordinary and customary meaning of “processor”. For example, in relation to an embodiment of the invention, Applicant’s specification states that “the external component preferably comprises a speech processor unit for receiving signals from a microphone and converting the detected sound into a coded signal through an appropriate speech processing strategy.” (See, Applicant’s specification, pg. 5, first paragraph.)

29. Applicant submits that Liautaud fails to disclose that the miniature speaker disclosed by Liautaud does any more than reproduce sound. Specifically, Applicant submits that Liautaud fails to disclose that the speaker performs any “calculations or other manipulations of data.” As such, Applicant submits that one of ordinary skill in the art would not consider the speaker to be equivalent to a “processor” according to the ordinary and customary meaning of that term and in light of Applicant’s specification. As such, Applicant submits that Liautaud fails to disclose or render obvious “at least one processor of said hearing prosthesis,” as recited in Applicant’s claim 19.

30. For at least the reasons discussed above, Applicant respectfully submits that claim 19 is allowable.

Claim 21

31. Applicant’s claim 21 recites, in part, “[a] cochlear implant comprising: an implantable component including an implantable elongate electrode carrier; and an external component comprising: . . . at least one processor of the cochlear implant disposed in the casing . . . the engagement of the pin member being releasable by a magnet configured to act on said plurality of magnetic spheres.” (See, Applicant’s claim 21, above.) Applicant submits that claim 21 is allowable at least for reasons similar to those discussed above in relation to claims 1 and 19.

32. Specifically, Applicant submits that the Examiner’s proposed combination of Liautaud, de Jong and the Background section of Applicant’s Specification is improper, as discussed above in relation to claim 1, and therefore does not render obvious “[a] cochlear implant comprising:

an implantable component including an implantable elongate electrode carrier; and an external component . . . the engagement of the pin member being releasable by a magnet configured to act on said plurality of magnetic spheres,” as recited in Applicant’s claim 21. In addition, for at least the reasons discussed above in relation to claim 19, Applicant asserts that the proposed combination of Liautaud and de Jong fails to disclose or render obvious “at least one processor of said cochlear implant disposed in the casing,” as recited in Applicant’s claim 21.

33. For at least these reasons, Applicant respectfully submits that claim 21 is allowable.

Claim 22

34. Applicant’s claim 22 recites, in part, “[a] medical device comprising: an implantable component; and an external component comprising: a casing; [and] at least one processor of said medical device disposed in the casing.” (See, Applicant’s claim 22, above.) For at least the reasons discussed above in relation to Applicant’s claim 19, Applicant submits that the Examiner’s proposed combination of Liautaud and de Jong fails to render obvious the medical device recited in Applicants’ claim 22.

35. Specifically, Applicant asserts that the combination of Liautaud and de Jong proposed by the Examiner does not contain or render obvious “[a] medical device comprising: an implantable component,” as recited in Applicant’s claim 22. In the Office Action, the Examiner states that “the limitation, ‘a partially implantable medical device’ has not been given patentable weight because the recitation occurs in the preamble.” (See, Office Action, pg. 10.) However, as amended, Applicant’s claim 22 recites “an implantable component” in the body of the claim. As such, Applicant requests that the Examiner give patentable weight to the recited “implantable component.” Additionally, at least for reasons similar to those discussed above in relation to claim 19, Applicant submits that the proposed combination of Liautaud and de Jong fails to disclose or render obvious “at least one processor of said medical device,” as recited in Applicant’s claim 22.

36. For at least these reasons, Applicant respectfully submits claim 21 is allowable.

Claim 24

37. Applicant's claim 24 recites, in part, "[a] cochlear implant comprising: an implantable component; and an external component comprising: . . . at least one processor of the cochlear implant disposed in the casing . . . wherein the retaining means is configured to transition from the first configuration to the second configuration upon application of a magnetic field thereto." (See, Applicant's claim 24, above.) Applicant submits that claim 24 is allowable at least for reasons similar to those discussed above in relation to claims 1 and 19.

38. Specifically, Applicant submits that the Examiner's proposed combination of Liautaud, de Jong and the Background section of Applicant's Specification is improper, as discussed above in relation to claim 1, and therefore does not render obvious "[a] cochlear implant comprising: an implantable component; and an external component . . . wherein the retaining means is configured to transition from the first configuration to the second configuration upon application of a magnetic field thereto," as recited in Applicant's claim 24. In addition, for at least the reasons discussed above in relation to claim 19, Applicant asserts that the proposed combination of Liautaud and de Jong fails to disclose or render obvious "at least one processor of the cochlear implant disposed in the casing," as recited in Applicant's claim 24.

39. For at least these reasons, Applicant respectfully submits that claim 24 is allowable.

Dependent claims

40. Applicant submits that the dependent claims incorporate all the subject matter of their respective independent claims and add additional subject matter which makes them independently patentable over the art of record. Accordingly, Applicant respectfully asserts that the dependent claims are also allowable over the art of record.

Conclusion

41. In view of the foregoing, this application should be in condition for allowance. A notice to this effect is respectfully requested.

42. Applicants make no admissions by not addressing any outstanding rejections or bases of rejections. Applicant reserves the right to pursue any cancelled claims or other subject matter disclosed in this application in a continuation or divisional application. Any cancellations and amendments of above claims, therefore, are not to be construed as an admission regarding the patentability of any claims and Applicant reserves the right to pursue such claims in a continuation or divisional application.

Dated: June 2, 2010

Respectfully submitted,

Electronic signature: /Michael G. Verga
Michael G. Verga
Registration No.: 39,410
CONNOLLY BOVE LODGE & HUTZ LLP
1875 Eye Street, NW
Suite 1100
Washington, DC 20006
(202) 331-7111
(202) 293-6229 (Fax)
Attorney for Applicant